

**COMMITTEE ON PUBLIC WORKS AND PURCHASING**  
(Standing Committee of Berkeley County Council)

**Chairman:** Mr. Robert O. Call, Jr., Council District No. 3

A **meeting** of the **COMMITTEE ON PUBLIC WORKS AND PURCHASING**, Standing Committee of Berkeley County Council, was held on **Monday, June 14, 2010**, in the Assembly Room of the Berkeley County Administration Building, 1003 Highway 52, Moncks Corner, South Carolina, at 6:23 p.m.

**PRESENT:** Chairman Robert O. Call, Jr., Council District No. 3; Committee Member Phillip Farley, Council District No. 1; Committee Member Timothy J. Callanan, Council District No. 2; Committee Member Cathy S. Davis, Council District No. 4; Committee Member Dennis L. Fish, Council District No. 5; Committee Member Caldwell Pinckney, Jr., Council District No. 7; Committee Member Steve C. Davis, Council District No. 8; Ms. Nicole Ewing, County Attorney; and Ms. Barbara B. Austin, Clerk of County Council. Committee Member Jack H. Schurlknight, Council District No. 6 and County Supervisor Daniel W. Davis were excused.

In accordance with the Freedom of Information Act, the electronic and print media were duly notified.

Chairman Call: "I'd like to call the Committee on Public Works and Purchasing for June to order. First item on the agenda is the approval of minutes from May 11, 2010 and May 24, 2010.

Committee Member Pinckney: "Move for approval"

Committee Member Callanan: "Second"

Chairman Call: "I have a motion and a second. All in favor say Aye? (Ayes) All opposed Nay? (No Response) The Ayes have it."

It was moved by Committee Member Pinckney and seconded by Committee Member Callanan to **approve** the minutes as presented. The motion passed by unanimous voice vote of the Committee.

Committee Member Fish: "Mr. Chairman"

Chairman Call: "Mr. Fish"

Committee Member Fish: "Before we start this session, I would like to make a motion to enter into Executive Session to discuss matters relating to the proposed location, expansion or the provision of services encouraging location or expansion of industries, or other businesses in the area served by the County; or discussions of negotiations incident to proposed contractual agreements, arrangements and proposed sale or purchase of property; in receipt of legal advice where legal advice relates to a pending, threatened or potential claim; or other matters covered

by the attorney/client privilege; settlement of legal claim; or the position of the County in other adversary situations involving assertion against the County of a claim.”

Committee Member Callanan: “So move”

Chairman Call: “This is an unusual request. It’s not on the agenda.”

Ms. Ewing: “I do believe there was a motion to approve the minutes on the floor that needed to be....”

Committee Member Callanan: “We approved them”

Committee Member Fish: “We voted on that”

Ms. Ewing: “Did you vote on that? I’m sorry. OK, my fault. I didn’t hear the vote.”

Chairman Call: “OK, we need to vote to go into Executive Session. I don’t ever do Executive Sessions in my Committee. All in favor say Aye? (Ayes) All opposed? (No Response) We will be right back.”

It was moved by Committee Member Fish and seconded by Committee Member Callanan to enter into Executive Session for the reasons stated. The motion passed by unanimous voice vote of the Committee.

The Committee entered into Executive Session at 6:27 p.m., and returned to Committee Session at 6:39 p.m.

Chairman Call: “Would you report us out of Executive Session, please?”

Ms. Ewing: “Yes, Mr. Chairman. The Committee went into Executive Session for the reasons stated in the motion. No action was taken.”

Chairman Call: “OK, next on the agenda is Chief Henery again for the sole source purchase of All In One 2.0 GPS Tracking Device. I know all about it. I love them.”

**A. C. W. Henery, Chief Deputy, Berkeley County Sheriff’s Dept.,** Re: Sole Source purchase of All In One 2.0 GPS Tracking Device.

Chief Henery: “I’m not your technical man, but this is normally referred to as a tracking device. We can place it on a piece of equipment, on a refrigerator, on a bull dozer and we can track it from where ever we are. We don’t have to be in line of sight. We can track it by computer.”

Committee Member S. Davis: “Move for approval”

Committee Member Fish: "Second"

Chairman Call: "I have a motion and a second. Any discussion? (No Response) Tell me, this is for stolen or....."

Chief Henery: "We can use it on stolen. We can use it a lot of things. We recently used one we borrowed from an adjoining county in a murder investigation. It is being purchased out of a grant."

Chairman Call: "Do you know how much it is?"

Chief Henery: "\$8,656.00."

Chairman Call: "\$8,000? Ok, what is the Committee's pleasure? Oh, we already got a motion and a second. All in favor say Aye? (Ayes) All opposed Nay? (No Response) The motion carries."

It was moved by Committee Member S. Davis and seconded by Committee Member Fish to **approve** the Sole Source purchase of All In One 2.0 GPS Tracking Device in the amount of \$8,656.00. The motion passed by unanimous voice vote of the Committee.

**B. Mr. John F. Hamer, CPPB, Director of Procurement, Re:**

**1. Architectural Services Indefinite Delivery Contract.**

Chairman Call: "Mr. Hamer. Mr. Fish, I think you want to have something to say about this item?"

Committee Member Fish: "I would make a recommendation that we hold item B for one month."

Chairman Call: "That we can do. Thank you, Mr. Fish."

**C. Mr. Micah Miley, Director of Engineering, Re:**

**1. Contract amendment for LBWWTP Phase III.**

Chairman Call: "Mr. Micah Miley, Director of Engineering, contract amendment for Lower Berkeley Waste Water Treatment Plant, Phase III."

Mr. Miley: "Thank you Councilmen. The proposed amendment is to add to the original scope of work. The work that we are adding is what we would commonly call the Electrical Master Plan. This change represents the remaining construction to complete the Electrical Master Plan. We recommend approval of the amendment in the amount of \$951,134.75 to Wharton Smith, Inc."

Committee Member Callanan: "Move for approval"

Committee Member Fish: "Second"

Chairman Call: "I've got a motion and a second. Any discussion?"

Committee Member Farley: "Yes, this is coming in \$2 million more?"

Mr. Miley: "No sir, this is coming in inside of the budget. The budget for the....."

Committee Member Farley: "The original contract was for \$12,900,000 and this is \$14,862,000."

Mr. Miley: "We added \$1.5 million to the scope of the budget when we did the approval of the Electrical Master Plan last year."

Committee Member Farley: "Ok, thank you."

Chairman Call: "Ok, I have a motion and a second. All in favor say Aye? (Ayes) All opposed Nay? (No Response) The Ayes have it."

It was moved by Committee Member Callanan and seconded by Committee Member Fish to **approve** the Contract amendment for **LBWWTP Phase III to Wharton Smith, Inc.** in the amount of \$951,134.75. The motion passed by unanimous voice vote of the Committee.

**2. Wassamassaw CDBG Water Project.**

Chairman Call: "Mr. Miley again."

Mr. Miley: "It is the recommendation of approval of the construction contract to Green Construction in the amount of \$882,346. We received seven responsive bids for the project. The contractor's references have been checked. He is capable of completing the project. This is a CDBG grant, where we received \$500,000 in grant and is within the budget that has been approved for the project."

Committee Member Callanan: "Mr. Chairman?"

Chairman Call: "Mr. Callanan"

Committee Member Callanan: "This is a.....how many customers were on this again and was part of our contribution on this, was that impact fees?"

Mr. Miley: "Our contribution on this project was impact fees as well as capital to work construction on the project and I do not have the waived impact fee numbers with me. The number of customers added was 69, from memory."

Committee Member Callanan: "So, how does this....let me just make sure I understand how this works. Once, he's getting the contract, he gets a letter awarding him the bid and then he gets a letter approving commencement of construction."

Mr. Miley: "Yes sir"

Committee Member Callanan: "Why is this under construction right now?"

Mr. Miley: "The contract was approved by the State. We sat down and went through a pre-construction conference with him. With the pre-construction conference, I told him we were tentatively going to approve Notice of Award owner before the last week of May. Went to sign into the contracts and issue the Notice of Award and realized that I had not been before you for approval of the contract. We are on tonight's agenda to do so."

Committee Member Callanan: "So, we've essentially awarded the contract prior to Council approval?"

Mr. Miley: "On a verbal, the contractor has begun work on the project."

Committee Member Fish: "You didn't answer the question."

Mr. Miley: "No sir, the contract has not been inked by the County to enter into the contract."

Committee Member Callanan: "Why would he start?"

Mr. Miley: "It was a verbal from me to start on or before the last week of May. The contractor did commence work prior to receiving the Notice....."

Committee Member Callanan: "But the memo says that you approved it on the 4<sup>th</sup>, on June 4<sup>th</sup>. Am I right on that? Yeah, June 4, 2010, Berkeley County Water and Sanitation received bids....."

Mr. Miley: "This is a memo requesting Approval of Award to Mr. Martin."

Committee Member Callanan: "I'll tell you why this concerns me so much, other than the obvious. In order to get the CDBG money, one of the requirements is that we strictly adhere to the Procurement process. Here, we are not. We are doing things backwards. We are telling him to start on the project and then going to Council for approval. Does this just go through one reading?"

Mr. Miley: "Yes sir"

Committee Member Callanan: "OK, my concern naturally is, I mean, we could potentially jeopardize the grant now, because we.... in an audit..... if they were to do an audit on

this, they would determine that construction started prior to approval by Council. Let me tell you the other thing that bothers me.....if I didn't have residents calling me up saying, 'Why are they digging up by street?', why is...I don't understand why this is not brought up to us. I understand it's an error, I just don't understand why the mentality is to hide it from Council and hope that we don't notice it. Then now, it has to be explained to us, 'Well, we missed a step'. That concerns me. It shows a lack of respect for this body that we can't...that things would actually be essentially hidden from us so we don't know about it until I bring this up. That's another red flag that I have on this. But I'll let you answer."

Chairman Call: "Mr. Callanan, you are questioning their integrity and their motives about whether they respect this body or not. I think over the last year and a half that I have been here, they have been most respectful of this body."

Committee Member Callanan: "Well, if you can respond to what I said about whether or not, not abiding by the Procurement Code puts us at risk with the grant and secondly, why wasn't it brought to our attention prior to me asking why this has been started on construction? Those two things."

Mr. Miley: "Following the letter of the law of the grant I cannot honestly answer right now in front of you. I can get back to you on whether this does or not. Right now, I don't have that solid answer for you. The issue was brought to you tonight. Sorry I didn't address it differently than what I did when I presented it to you."

Mr. Colin Martin, Executive Director, Berkeley County Water and Sanitation: "I apologize for that they way it came across. The decision remains the same as to who to award the bid too, but I understand it. I can assure you in the three years that I have been here, this has never happened before. We caught it at a point of getting ready to award...tell them to go ahead in writing to work, a Notice to Proceed. He proceeded anyway without that. We got it to Council as fast as we could after we recognized the mistake and he's doing the work at his own risk."

Committee Member Callanan: "The point being, you realize a mistake was made...and I think it is a pretty big mistake when a guy starts construction on a project for a CDBG grant without approval of Council. I don't hear why we were not told of the problem in advance. That's the question that I am having is why say 'Hey Tim, send an email out to Council, we have an issue, I want to let you know what the issue is' because to me this is a big issue."

Mr. Martin: "We should have done that. We just got it to you for decision. The parameters of the decision are the same. I certainly understand what you are saying. We should have done that. We just brought it to you as quickly as we could for a decision and I apologize."

Committee Member S. Davis: "Mr. Chairman?"

Chairman Call: "Mr. Martin, it looks to me like the risk...most of the risk is on the contractor, going to work without a contract. We didn't approve the contract. He's the one...."

Mr. Martin: "We could have stopped him, but we perceived that it would cost the County more if we had, even though he held the risk."

Committee Member Fish: "Mr. Chairman. The contract has been signed. Is that a true statement?"

Mr. Martin: "That's not true, no."

Committee Member Fish: "Mr. Chairman, I would also make a point is this is not the first time this has happened. I've been complaining about the lack of transparency for a couple of years. Same thing happened recently with the gas contract when you brought it to us, when in fact, Charleston County, everybody knew about it. The press even knew about it. In closed door session you talk about the contract being approved and the next day the contracts are signed. This administration has a history of doing things without Council's approval."

Mr. Martin: "I can assure you that this has never happened since I've been here."

Committee Member S. Davis: "Mr. Chairman?"

Chairman Call: "Mr. Caldwell Pinckney"

Committee Member S. Davis: "Steve Davis, thank you though. Caldwell is a great fellow but this is Steve Davis this time. One question...were Green Construction actually doing on-going work during this process?"

Mr. Miley: "Yes sir, they are."

Committee Member S. Davis: "Listen to me. Listen to the question. Do we have an existing contract with...."

Mr. Miley: "No sir, we do not have an existing contract."

Committee Member S. Davis: "That's my question. To me, I could understand this occurring if you got a fellow contracted to do one particular thing, then you got a new contract you want to engage in and you know, you just kinda went on over, but that's not the case."

Mr. Miley: "They have done plenty of contracts with us in the past....."

Committee Member S. Davis: "No, Micah, I'm talking about when this was going on. There was no contract with them."

Mr. Miley: "No sir"

Committee Member S. Davis: "So these folks just made the assumption that they were...that they could start working. I'm going to tell you this. This big push we talking about transparency and the buck stops somewhere and it's a right way to do things and I'm going to agree with Tim in this regard, that once you learn about it, you didn't even bring it...brought it forth in the openness manner like that, 'We goofed up, this is what we have, Council, we put the cart before the horse and you know, this is what ya'll need to deal with'. I mean, we are sitting up here. We have an obligation to.... and I think the folks on Cooper Store Road and Queenie Road and Longridge Road and Yaremich Road, they desperately need the water. No question about it. But at the same time, I think there is an obligation for the folks that we put in position to carry out the policies that we have been mandated or mandate ya'll to do, that there has got to be some openness. I just agree that we should not be in this position at all. None. We just shouldn't."

Committee Member C. Davis: "Mr. Chairman?"

Chairman Call: "Ms. Davis"

Committee Member C. Davis: "Has Green Construction received any money from Berkeley County?"

Mr. Miley: "No Madam"

Committee Member Farley: "Mr. Chairman?"

Chairman Call: "Mr. Farley"

Committee Member Farley: "When was this construction started? How long have they been....."

Mr. Miley: "The last week of May"

Committee Member Farley: "The last week of May. So it has been going on three or four weeks. This will service 69 people...69 houses?"

Mr. Miley: "LMI qualified households"

Committee Member Callanan: "Mr. Chairman?"

Chairman Call: "Mr. Callanan"

Committee Member Callanan: "I'd like to find out what our exposure is on this. My concern is..you know, there was an issue that there was some statement said somewhere that it's the contractor who has all the risk and I don't believe that until somebody tells me for certain that what we've done essentially, starting construction, verbally awarding the bid or whatever you called it, prior to Council's approval, whether or not that affects our ability to receive that



grant. Because that is a half a million dollars. That is an enormous of exposure for the County and I would like to know if in fact we are subject to that exposure and we reveal it to them now, whether we can somehow eliminate the risk.”

Mr. Martin: “Yes sir, we will certainly get you that information. Just a matter of clarification. Mr. Miley told the contractor that he intended to give a Notice to Proceed on a particular date. He did not tell him a verbal go ahead. He chose to go ahead. We discovered it. We brought it to you at the next meeting and this is where we are. I recognize the manner in which we brought it forward and the timing is inappropriate.”

Committee Member Callanan: “You told them you were going to give them a Notice to Proceed, but what was the date you gave them that you said you were going to give them that?”

Mr. Miley: “The 25<sup>th</sup>.”

Committee Member Callanan: “The 25<sup>th</sup> of June?”

Mr. Miley: “May”

Committee Member Callanan: “There was no meeting. That’s the thing that I don’t understand. Why would we give them a date...why would we give him that date specific if...”

Mr. Martin: “And that is where the error happened originally. It’s not unusual to give a contractor a point so he can mobilize his forces and get started. The Notice to Proceed was brought to me for signature and it was at that time, it dawned on us that it had not come to Council.”

Committee Member Callanan: “And when was that? May 20 something?”

Mr. Martin: “No. That was a week ago. The contract has not been signed and the Notice to Proceed has not been signed.”

Chairman Call: “Any further discussion?”

Committee Member Callanan: “If holding them up would...that would cost us serious money?”

Mr. Miley: “We would potentially have to pay for demobilizing from the site and the remobilizing to the site.”

Committee Member Callanan: “I just want to know our.....before I vote on this, I want to know what our exposure is. That is thing that worries me the most.”

Ms. Ewing: "Mr. Callanan, we have that meeting scheduled on Thursday at 2 pm. Could we consider holding this over until then and have a report from the Water & Sanitation's attorney as to exposure. It's three more days."

Committee Member Callanan: "Well, can we get something from COG on it?"

Ms. Ewing: "That, I don't know."

Committee Member Callanan: "I mean an attorney's opinion is just that...an opinion."

Ms. Ewing: "We can at least try and that way we won't have to hold it over for two weeks or anything like that."

Committee Member Callanan: "Ok, if we can hold this until Thursday that would satisfy me more."

Committee Member S. Davis: "Mr. Chairman, my most important concern, other than the issue that deals with where we are, is that the folks that live along that road don't be penalized in relationship. I think they are the innocent party in all this regarding whether they actually receive safe drinking water or not. So, any decision we make, I hope it don't hinge pinge in a sense, that in effect something that they desperately need because the decision's been made by the grant process that they apparently meet the qualifications for it. Now, it's not their fault that the operation hasn't been conducted in a manner consistent with County policy. I would just ask this Council to be very mindful of that interest also."

Chairman Call: "What's the Committee's pleasure?"

Committee Member Callanan: "I'm going to make a motion that we hold this until Thursday's meeting."

Committee Member Fish: "Second"

Chairman Call: "I have a motion and Mr. Fish seconded. Any further discussion? (No Response) All in favor say Aye? (Ayes) Opposed? (No Response) The Ayes have it."

Chairman Call: "Next is Mr. Steve Hively, Director of Operations with reference to Pump Station 005 Valve Replacement."

**D. Mr. Steve Hively, Director of Operations, Re: Pump Station 005 Valve Replacement.**

Mr. Hively: "Mr. Chairman and members of the Committee. The project before you is replacement of three 18" gate valves at Pumping Station #5. We received bids on May 18<sup>th</sup>. The apparent low bidder was McClam and Associates. We recommend award of this project to McClam and Associates in the amount of \$43,900."

Committee Member S. Davis: "Move for approval"

Chairman Call: "I have a motion. Second?"

Committee Member Fish: "Second"

Chairman Call: "A motion and a second. Any further discussion?"

Committee Member Fish: "Mr. Chairman? I've got to ask the question. Did they start work on this already? Have they already worked on this project?"

Mr. Hively: "No sir, they are not working on this project."

Chairman Call: "I think you are trying to embarrass these people. I really object to that. I wish you would not do that in my Committee. I have a motion and a second."

Committee Member Farley: "Steve, you said the contractor that installed these are out of business."

Mr. Hively: "Yes sir. The original contractor, which was Charleston Constructors, finished the project in either 06 or 07. I don't remember the exact dates. The project was put into operation and that is when we discovered there was a problem with the valve, but by the time we found that the valves were not operating as smoothly as would wish for them to, they were out of business. It was put on a punch list, but we were never able to get any retribution for that. Subsequently, between now and then, they've actually seized up. We are in a position in order to maintain the integrity of the station, we have to replace the valves."

Chairman Call: "Any other questions? I have a motion and a second. All in favor say Aye? (Ayes) Opposed Nay? (No Response) The motion carries."

It was moved by Committee Member S. Davis and seconded by Committee Member Fish to **approve** awarding the contract for the **Pump Station 005 Valve Replacement** to McClam and Associates in the amount of \$43,900. The motion passed by unanimous voice vote of the Committee.

It was moved by Committee Member Callanan and seconded by Committee Member Fish to **adjourn** the Committee on Public Works and Purchasing meeting. The motion passed by unanimous voice vote of the Committee.

The meeting ended at 7:01 pm.

July 12, 2010

Date Approved

**PUBLIC WORKS AND PURCHASING**  
(Standing Committee of Berkeley County Council)

Chairman: Mr. Robert O. Call, Jr., District No. 3

Members: Mr. Phillip Farley, District No. 1  
Mr. Timothy J. Callanan, District No. 2  
Mrs. Cathy S. Davis, District No. 4  
Mr. Dennis Fish, District No. 5  
Mr. Jack H. Schurlknight, District No. 6  
Mr. Caldwell Pinckney, Jr., District No. 7  
Mr. Steve C. Davis, District No. 8  
Mr. Daniel W. Davis, Supervisor, ex officio

A meeting of the **COMMITTEE ON PUBLIC WORKS AND PURCHASING**, Standing Committee of Berkeley County Council will be held on **Monday June 14, 2010, at 6:00 p.m.**, following other scheduled committee meetings in the Assembly Room, Berkeley County Administration Building, 1003 Highway 52, Moncks Corner, South Carolina.

**AGENDA**

**APPROVAL OF MINUTES**

**May 11, 2010**

**May 24, 2010**

- A. C. W. Henery, Chief Deputy, Berkeley County Sheriff's Dept.,** Re: Sole Source purchase of All In One 2.0 GPS Tracking Device.
- B. Mr. John F. Hamer, CPPB, Director of Procurement,** Re:
  - 1. Architectural Services Indefinite Delivery Contract.**
- C. Mr. Micah Miley, Director of Engineering,** Re:
  - 1. Contract amendment for LBWWTP Phase III.**
  - 2. Wassamassaw CDBG Water Project.**
- D. Mr. Steve Hively, Director of Operations,** Re: Pump Station 005 Valve Replacement.

June 9, 2010  
S/Barbara B. Austin, CCC  
Clerk of County Council